

Comments of King County DNRP on “Department of Health and Department of Ecology
Proposed Approaches Regarding Service Area, Compliance, and Consistency” [2/17/06
version] [“(5)(2) document”]
(3/31/06)

The comments are organized around some general observations or concerns about the document as a whole, and then by each question in the document.

General comments/questions

- 1 It would be helpful to have the language from the relevant sections of legislation either up front or at the end of the document to help interpret the proposed document .
- 2 We support the notion that continuous “compliance” is the intent of 5(2), but note that the policy seems to do very little to ensure that that happens, and simply relies on an initial review of the plan at the time of approval, with little else happening for the ensuing six years.
- 3 It would also be helpful to have basic information/assumptions (e.g., individual water system plans updated every six years; small water system management programs not required of which small systems, and when does DOH approve SWSMP's, which is required to trigger 5(2); WSPs are not required of non-expanding water systems; define an “engineering document” that can also trigger application of this policy).
- 4 Is there a retroactive effect re approval of service areas by local legislative authorities under the Coordination Act (RCW 70.116), or prospective (i.e., only new or updated plans)? What is the connection between service areas for water systems covered by/approved in CWSP's (requiring local legislative authority approval) and service areas in individual water system plans for water systems in CWSP areas? There doesn't seem to be any discussion of this provision in (5)(2).
- 5 Be clear to distinguish between the two separate notions in (5)(2) that a water system must be operating in compliance with its approved plan, and the plan must not be “inconsistent with” local plans, in order to receive the benefit of this section. The statute requires a system to be “in compliance” with its approved plan in order to get the (5)(2) benefit, but this policy seems to interpret the requirement more as the system needing to be “in compliance with” the MWL, or with DOH planning requirements. What must be in a WSP or SWSMP in order to receive DOH approval is a separate issue.
- 6 The plan doesn't appear to clearly acknowledge or articulate the role of local governments in the (5)(2) process; at a minimum, they have to be engaged in the discussion of local consistency/inconsistency determinations, and also need to be informed of any determinations made by either state agency that would affect their issuances of permits, subdivision approvals, etc.
- 7 There are a couple of places where the policy seems to emphasize an intent that neither agency will actively pursue compliance solely for this provision of the MWL. If this is the case, then there should be some clear commitment to taking some action when compliance issues become known, and also incorporating

- compliance reviews into ongoing agency processes (e.g., water rights changes/reviews by Ecology; operating permit reviews by DOH).
- 8 Many water-related provisions are required by law to be incorporated into comprehensive plans adopted by local governments (e.g., provisions of 2514 plans; groundwater management plans; coordinated water supply plans), in addition to GMA-mandated water provisions for those plans (e.g., protecting groundwater in rural areas; critical aquifer recharge areas), so it is logical to ensure that water utility plans are consistent with these local government plans, and that state agencies work toward this objective.
 - 9 We support and appreciate the language in the policy that refers to the joint responsibilities of the two state agencies to implement these provisions.

Question 1

- 1 Is there language in the MWL that supports the policy's application to an “area outside the retail service area, if applicable,” and what does it mean? Does the utility describe in its WSP the boundaries of its service area (i.e., Is this an area where it might serve, but has no duty to serve? What if it overlaps with another utility’s service area?), and are there criteria that apply to the approval of such areas (as there are for retail areas)?
- 2 The last sentence is a good statement of what subsection (5)(2) appears to mean.

Question 2

- 1 What does the word “seeking” mean? Does a utility have to specifically ask for the expanded place of use in the WSP?
- 2 We support the idea that there should not be artificial distinctions regarding responsibilities under state law, e.g., “the Water Code which Ecology administers.” RCW 90.03.386 has long contained the provision that the two state agencies should cooperate, which we think has historically been viewed as direction to both agencies, irrespective of where it was placed in state statute.
- 3 Although water utilities “benefit from” the expanded place of use, the ultimate end of many provisions of the MWL is to ensure that water systems have tools to ensure that end users get safe and reliable water, which is one of the principles that should guide interpretation of the statute.
- 4 How can “initial compliance” [presumably compliance by the utility with its water system plan or small water system management program] be done at the time of WSP or SWSMP approval? Will the agencies be looking at whether the utility is at that time in compliance with its old plan (which seems irrelevant to a prospective expansion of its service area), or with its new plan (which seems to be logically impossible)? It would seem to make more sense to identify the elements of a WSP from the MWL that will not only need to be in the initial plan but will also have some kind of ongoing scrutiny in order to ensure “continuous” compliance.
- 5 What does “will not actively investigate” mean? If circumstances are brought to the agency’s attention, will it investigate those?

Question 3

- 1 The statute specifically requires that the water system be “in compliance” with the provisions in its water system plan with regard to water conservation, yet this isn’t listed as one of the specific items to be looked at.
- 2 We appreciate the effort to develop what appears to be a list of required elements of a water system. If it is also a checklist of the elements of an approved water system plan that a water utility must be “in compliance with” in order to receive and maintain the expanded service area, that should be made clear.
- 3 We appreciate the attempt to be specific in the listing, and the inclusion particularly of the requirement that a WSP identify reclaimed water opportunities. The list seems to be missing other key elements from the MWL (e.g., how the utility is meeting its duty to serve under Section 8; how it is addressing the effects of conserved water under Section (5)(3); how it has integrated proposed inchoate water use into watershed planning under Section 9; and whether it is, has been, or plans to be a recipient of a water rights change under Section 14(3), which also requires an approved water system plan).
- 4 Will this list be maintained separately (i.e., will the policy be updated periodically) in order to remain consistent with what DOH describes in its guidance/policies/rules with regard to planning requirements necessary to meet the MWL?

Question 4

- 1 How does a water system “request” the expanded place of use?
- 2 Under Section 8 of the MWL, DOH does not “make the determination” of local government consistency; it is required to “ensure” that the water system plans are consistent with local government plans, which implies that somebody else (presumably local governments) makes at least the initial or preliminary determination. There needs to be a discussion of how local governments are pulled into the process to do this. DOH already has some guidance developed for this issue under Section 8, and may be developing rules, and it would be helpful to note whether the text in this policy is merely an attempt to restate in a shorthand way what is already contained in other DOH documents.
- 3 The division of responsibility on consistency is appropriate. Ecology should spell out how it intends to engage local governments in re the watershed plan requirement.
- 4 This question refers only to the “retail” service areas, and not any other area. This seems inconsistent with question 1, but more accurately reflects the language in the MWL.
- 5 Is there a need for the detail re consistency checklists and process, or should it refer to other more detailed descriptions (e.g., DOH guidance)? It should also be made clear that local governments play a significant role in this determination, that DOH’s role under the MWL is to “ensure” that such determinations are made, and the utilities enter into the determination only if the local government is unable to do so. It should also be made clear that utilities are being invited to unilaterally

- make such a determination if they simply disagree with the local government.
- 6 It is not clear if the water utility will get the expanded place of use if the WSP does not mention consistency with watershed plans in its WSP, thereby avoiding triggering Ecology review.
 - 7 We would support the idea that Ecology's decisions would be appealable.

Question 5

- 1 This question, as pointed out above, still needs to have a definition of what it is that the water system is supposed to be in compliance with; the statute appears to clearly say that the water system needs to be in compliance with its approved plan.
- 2 The policy should articulate opportunities that both DOH and Ecology will have to review the system's compliance with its plan. These include DOH annual operating permit reviews, WFI submittals, Consumer Confidence Reports, sanitary surveys. For Ecology, it would include any water rights actions, any reviews of plan updates/amendments, any watershed plan implementation activities.
- 3 How does a local government find out about Ecology determinations re POU?
- 4 King County generally supports the approach toward service areas where the utility is not in compliance with its approved plan. As noted above, such determinations need to be communicated to local governments for permitting, approval, etc. actions at the local government level.
- 5 There should be an explanation for the need for a transitional period until 2009, and the implications. For example, do water utilities get the expanded place of use, but do not need to be in compliance with their approved plans until 2009?
- 6 In the next to last paragraph, the list of plans for which water systems need to resolve inconsistencies needs to include comprehensive plans, as (5)(2) says.